REMARKS

I. Status of the Claims

Claims 14, 17, 20, 23-25 and 30-38 were pending at the time of the Action. Claims 23, 24, and 35-38 are cancelled. Claims 14, 25, 31, 32, 33, and 34 have been amended. Claims 39 and 40, which are identical, except for their depencies to claims 17 and 20, have been added. Support for the amended claims and the new claims can be found throughout the disclosure as originally filed and more particularly at least on page 6, lines 12 – 22; page 7, lines 1-5; page 8, lines 3-15; page 52; page 55, lines 14 and 15; and the claims as originally filed. No new subject matter has been added by the afore mentioned amendments.

Claims 14, 17, 20, 25, 30-34, 39 and 40 are now pending and in condition for allowance.

II. Elections/Restrictions

The Action objected to claims 24-25 and 35-38 as being directed to an independent and distinct invention. Applicants have amended claim 25 to be directed to a nucleic acid. Claims 24 and 35-38 have been canceled. Applicants request that claim 25 be consider as it now is in line with claimed invention.

III. Rejections under 35 U.S.C. §103

The Action rejects claims 14, 17, 20, 23 and 31 as being obvious in light of Noda (1987) in view of PCT publication WO 97/01577, Malo (1994) and Current Protocols in Molecular Biology. Applicants traverse.

The combination of Noda in view of WO 97/01577, Malo, and Current Protocols in Molecular Biology fail to disclose or suggest every element of the claimed invention. Applicants

note that it is well settled that a method for isolating a nucleic acid sequence in combination with what was well known to one skilled in the art is insufficient in establishing the sequence of a DNA. The DNA sequence is not established until the DNA is in fact isolated. See *Fiers v. Revel*, 984 F.2D 1164, 1168 (Fed. Cir. 1993) citing *Amgen v. Chugai*, 927 F.2d 1200 (Fed. Cir. 1991). Furthermore, *KSR International Co. v. Teleflex Inc.*, *127 S. Ct. 1727, 1742, 167 L. Ed. 2d 705 (2007),* is often cited for the proposition that "[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp.". The passage above in KSR posits a situation with a finite, and in the context of the art, small or easily traversed, number of options that would convince an ordinarily skilled artisan of obviousness. In this case, the ordinarily skilled artisan would have to have some reason to select (among an outrageous number of unpredictable alternatives) the DNA sequence that produced the human SCN1A protein. Clearly, having a homolog of a gene and extrapolating the coding sequence of a gene isolated from another animal is not the easily traversed, small and finite number of alternatives that KSR suggested might support an inference of obviousness. *Id. at 1742. -- Ortho-McNeil Pharmaceutical Inc. v Mylan Pharmaceutical Inc.*, 520 F.3d 1358, 1364 (Fed. Cir. 2008).

Applicants also note that claim 14(c)(i) recites human wildtype SCN1A (SEQ ID NO:3), 14(c)(ii)-(iv) recite mutants of SEQ ID NO:3, and 14(c)(v) is directed to sequences that are 95% identical to SEQ ID NO:3 **and also contain** the mutations described in (ii)-(iv). The claimed sequences are thus not anticipated or obviated by the rat sequence disclosed in Noda.

Claims 14, 17, 20, 23 and 31 are non-obvious over the cited reference, a prima facie case of obviousness has not been made. Applicants request the withdrawal of the rejection.

IV. CONCLUSION

Applicants believe that the present document is a full and complete response to the Action dated June 19, 2008. The present case is in condition for allowance, and such favorable action is respectfully requested.

The Examiner is encouraged to contact the undersigned Attorney at (512) 536-3167 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

Charles P. Landrum
Reg. No. 46,855
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Ave., Suite 2400
Austin, Texas 78701
(512) 536-3167
(512) 536-4598 (facsimile)

Date: November 19, 2008